Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ALBERT LANDESBERG, Petitioner

v.

UNITED STATES
BANKRUPTCY COURT, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ALBERT LANDESBERG, Pro Se
5000 15th Avenue, #6B
Brooklyn, New York 11219
718-438-0841

31pp

QUESTION PRESENTED

Is a United States Bankruptcy Court immune from harmful consequences resulting from debtor-in-possession who while directly under the Court's protection, committed breach of contract, commission of larceny and theft of services.

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No. _____

IN THE

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OCTOBER TERM, 1993

ALBERT LANDESBERG, Petitioner

v.

UNITED STATES BANKRUPTCY COURT -

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Petitioner, Albert Landesberg, respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Second Circuit denying Petitioner's motion for

reconsideration of Bankruptcy Court's order dismissing Petitioner's complaint that, among other things, because Bankruptcy Court did not appoint trustee to oversee business operations of debtor-in-possession, Petitioner was not afforded equal protection under the law when such debtor breached a contract with Petitioner which resulted in harm to the Petitioner.

OPINIONS BELOW

The opinion of the United States District Court is reported in the Memorandum Endorsement by Judge Stanton, January 4, 1993, Albert Landesberg v United States District Court, Southern District of New York, 92 Civ. 4928 and appears in Appendix B to this Petition. The unpublished written ruling of the

United States Court of Appeals, Second Circuit, November 30, 1993, appears in Appendix C to this Petition.

JURISDICTION

The United States District Court's Memorandum of Endorsement was issued January 4, 1993. A timely motion by Petitioner pursuant to Fed.R.Civ.P. 60(b) was filed with the United States Court of Appeals, Second Circuit. The Court of Appeal's denial of motion was issued November 30, 1993 and is set forth in Appendix C attached to this Petition. It is argued herein that the question presented in this Writ of Certiorari has not been, but should be, settled by the Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendments I, VIII and XIV to the United States Constitution.

STATEMENT OF THE CASE

On October 17, 1990 Petitioner entered into a tour contract, for the period from November 8 to November 26, 1990 for a trip to Argentina and Chile, with one Michael Steinberger, who was then a Debtor-in-Possession d/b/a Latour of 15-22 215th Street, Bayside, New York 11360, who also owned Latour Ltd.-Worldwide Tour Operator of 15-22 215th Street, Bayside, New York 11360, and who was also a shareholder in a corporation known as Latour Travel Services Ltd. of 150 Burns Street, Apt. 3F, Forest Hills, New York 11375. Mr. Steinberger immediately breached Petitioner's contract with him, committed larceny and

theft of services, which caused Petitioner emotional stress and left Petitioner emotionally scarred.

Not knowing that these corporations were bankrupt at the time, Petitioner sued against them in Small Claims Court. By virtue of the attorneys for these corporations not appearing in Court to tell the Court that these corporations were bankrupt, Petitioner lost out on the bar date to collect Petitioner's money.

Thereafter, Petitioner submitted Proof of Claim at a hearing in United States Bankruptcy Court on May 1, 1991. There the Petitioner stated because of the Court's negligence of not giving Petitioner equal protection of a trustee, Petitioner held the Court responsible for its actions. Petitioner also pleaded cruel and inhuman

punishment which the Court totally disregarded. Petitioner also spoke of a clerical typing error in the Court schedule since the name and address of the debtor was not listed and the docket record showed a wrong address for Latour Ltd., as "114 East 28th Street, New York, NY 10016-8408," which was not the address of the debtor. The only argument the Court gave Petitioner was to cite Sharma v. Stevas, 790 F.2d 1486, 1486 (9th Cir. 1986) "(clerk of court has absolute quasi-judicial immunity because challenged activities were an integral part of the judicial process)." This denied the Petitioner the right to challenge this decision because a typist was involved and the clerk of the court neglected to rectify these mistakes.

Petitioner then filed an Appeal with the United States District Court

for the Southern District of New York, based upon the equal protection clause of Fourteenth Amendment to the Constitution in the way of a trustee, and with proof of contract, which the debtor breached, larceny, theft of services, which led to cruel and inhuman punishment and proof of clerical errors and with additional proof of another mistake in address.

The only defense the Court had was the quasi immunity under Sharma v. Stevas (Ibid.) and the Bankruptcy Court eo nomine is absolutely immune from the suit under the doctrine of sovereign immunity, Mullis v. United States Bankruptcy Court, District of Nevada, 828 Fd 1385, 1387 (9th Cir. 1987).

With this quasi immunity and eo nomine absolute immunity from suit under the doctrine of sovereign immunity,

Petitioner was forced to dismiss the complaint without prejudice to whatever rights Petitioner may have against Latour, but not against the courts because the courts violated Petitioner's rights under the First, Eighth and Fourteenth Amendments to the Constitution.

An Appeals Court subsequently overturned Sharma v. Stevas (Ibid.) ruling that a clerical error and a typing error could be challenged because a murder conviction was overturned as with the brothers William and Edward Adymm. ("They were entitled to a new trial because a verdict sheet was improperly prepared.")

Also, the United States Supreme Court's Memorandum of Law was not affirming Petitioner's rights under the First, Eighth and Fourteenth Amendments

because the Courts misinterpreted the Constitution.

Petitioner then filed an amended lawsuit increasing Petitioner's claim from twenty five thousand dollars to one million five hundred thousand dollars by adding additional defendants and with additional evidence such as an extra address and the name of another corporation with a similar name.

This Appeals hearing was held in the United States Court of Appeals for the Second Circuit on November 8, 1993 presided by Honorable James L. Oakes, Honorable Amalya L. Kearse and Honorable Frank X. Altimari, Circuit Judges. These judges who were presiding totally ignored the Appeals Court's ruling "That the Court found that while the evidence was sufficient to convict the men, brothers William and Edward Adymm,

they were entitled to a new trial because a verdict sheet was improperly prepared," which promptly overruled Sharma v. Stevas (Ibid).

And, after the Petitioner presented to the court a 28J Form, the Court totally ignored the United States Supreme Court's Memorandum of Law regarding Petitioner's rights under the First, Eighth and Fourteenth Amendment because of the Court's misinterpretation of the law.

Thus, the United States Court of Appeals for the Second Circuit dismissed the appeal because the Court misinterpreted the Constitution regarding the Petitioner's rights under the Fourteenth Amendment and disregarded the United Supreme Court's Memorandum of Law affirming my rights under the Eighth Amendment and the cruel and unusual

punishments inflicted. Because of the Court's misinterpretation of the Constitution, the Court never protected Petitioner against the fraudulent business practice of a debtor-in-possession to amass one million five hundred thousand dollars and allowed the corporation known as Latour World Wide Tour Operators Ltd. or Latour Travel Services to "engage in an unlawful act or activity for which corporations may be formed under Business Corporation Law."

So, by the blatant abuse of a privilege of eo nomine, absolute immunity by the Courts and by the misinterpretation of the Fourteenth Amendment to the Constitution, which led to fraudulent business practice of a debtor and a debtor-in-possession and by the Court's action under eo nomine,

by allowing a corporation to engage in an unlawful act under Business Corporation Law, which led to violation of Petitioner's civil rights under the Eighth Amendment and Petitioner's rights under the First Amendment's grievance against the government, Petitioner asks for a judicial review, as in Marbury v. Madison, February 24, 1803, where the power of judicial review has repeatedly defended against rights against the government and the courts and the overreaching of the government and which has been upheld in more recent times in the Courts.

The question of quasi immunity was overturned by an Appeals Court in a murder conviction of two brothers, William and Edward Adymm. The Appeals Court ruled "they were entitled to a new trial because a verdict sheet was

improperly prepared."

Petitioner then filed an amended lawsuit increasing Petitioner's claim from twenty five thousand dollars to one million five hundred thousand dollars by adding defendants. Since Petitioner has the right under the First Amendment to the Constitution to petition the government for a redress of grievances, Petitioner therefore then added the government as a respondent.

REASONS FOR GRANTING WRIT

In the judicial review of bankruptcy legislation, the courts made Petitioner a victim; Petitioner could not get the return of Petitioner's monies in Bankruptcy Court. The District Court forced Petitioner to sign an agreement not to hold the courts

responsible for their actions. The Second Circuit Court prejudged Petitioner under eo nomine absolute immunity - and upheld eo nomine, thus disregarding the United States Supreme Court's recognizing Petitioner's rights under the Eighth Amendment and under the Fourteenth Amendment of the Constitution of equal protection of the law to any person within its jurisdiction and Petitioner's rights to any compensation or consumer protection against unfair business practices of a debtor. There is no compensation for Petitioner as Congress refuses to pass of any the bills in this regard to protect Petitioner.

The United States Bankruptcy Court, the United States District Court and the United States Court of Appeals misinterpreted the Constitution and

allowed a debtor-in-possession while under the protection of the Bankruptcy Court to breach a contract, commit larceny and theft of services, which led to cruel and inhuman punishment to Petitioner.

Since Marbury v. Madison, February 24, 1803, this power of judicial review has repeatedly defended individual rights against the overreaching of the government; in this situation the Courts ruled that a crime had been committed by a debtor while under the protection of the Bankruptcy Court.

CONCLUSION

For the reasons stated above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

Dated March 13, 1994

Respectfully submitted,

ALBERT LANDESBERG
Pro Se

APPENDIX A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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ALBERT LANDESBERG,

Plaintiff,

-against- 92 Civ. 4928

UNITED STATES BANKRUPTCY COURT ORDER

SOUTHERN DISTRICT OF NEW YORK,

Defendant.

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With plaintiff's consent, this case is dismissed without prejudice to whatever rights plaintiff may have against LaTour or LaTour Ltd.

Dated: New York, New York

August 5, 1992

_____

Louis L. Stanton

U.S.D.J.

APPENDIX B

MEMORANDUM ENDORSEMENT

Albert Landesberg v. United States District Court, Southern District of New York, 92 Civ. 4928 (LLS), January 4, 1993.

Pro se plaintiff Albert Landesberg moves for reconsideration, pursuant to Fed.R.Civ.P. 60(b), of this court's order dismissing the complaint.

On October 7, 1990 plaintiff entered into a tour contract with La Tour Ltd. He claims that La Tour's agent, Michael Steinberger, breached the contract "by not faxing the amount of $805.25 to Santiago, Chile." (Complaint at 1). To recover his loss, Plaintiff brought this action against the Bankruptcy Court, alleging that in the Chapter 11 bankruptcy proceeding filed by La Tour, "the court was lax in its responsibility [sic] to see all contracts were to be dutiflly [sic] enforced." (Complaint at 2). With plaintiff's consent at a pretrial

conference on August 5, 1992, this court dismissed the complaint without prejudice to whatever rights plaintiff may have against La Tour.

In support of this motion for reconsideration, plaintiff asserts that "in many bankruptcy proceedings under Section 11 of the Bankruptcy Court 'Referees' or 'Trustees' are appointed to oversee the business operations of the debtor." Plaintiff contends that because a trustee was not appointed in the La Tour action, the Bankruptcy Court denied him equal protection.

The bankruptcy court eo nomine is absolutely immune from suit under the doctrine of sovereign immunity. - Mullis v. United States Bankruptcy Court, Dist. of Nevada, 828 F.2d 1385 (9th Cir. 1987), cert. denied, 486 U.S. 1040, 108 S. Ct. 2031 (1988). Furthermore, judges and other court personnel are absolutely

immune from civil liability for damages arising out of their judicial acts. See Stump v.Sparkman, 435 U.S. 349, 356-57, 98 S. Ct. 1099, 1105 (1978)("A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'"; Liffiton v. Keuker, 850 F.2d 73, 76 (2d Cir. 1988)(because issuing a warrant is within judicial capacity, judge is immune from damage liability for his actions); Sharma v. Stevas, 790 F.2d 1486, 1486 (9th Cir. 1986)(clerk of court has absolute quasi-judicial immunity because challenged activities were an integral part of the judicial process).

Because plaintiff's action against the bankruptcy court cannot succeed, plaintiff's motion for reconsideration is denied. So ordered.

APPENDIX C

UNITED STATES COURT OF APPEALS SDNY

Stanton

FOR THE SECOND CIRCUIT 92 CV 4928

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At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighth day of November one thousand nine hundred and ninety-three.

Present: HONORABLE JAMES L. OAKES
HONORABLE AMALYA L. KEARSE,
HONORABLE FRANK X. ALTIMARI,
Circuit Judges.

ALBERT LANDESBERG, No. 93-6036

Plaintiff-Appellant,

v.

UNITED STATES BANKRUPTCY COURT,

Defendant-Appellee.

Appeal from the United States

District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by plaintiff pro se and by counsel for defendant.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court denying plaintiff's motion pursuant to Fed. R. civ. P. 60(b) be and it hereby is affirmed substantially for the reasons stated in Judge Stanton's Memorandum Endorsement dated January 4, 1993.

JAMES L. OAKES, U.S.C.J

AMALYA L. KEARSE, U.S.C.J.

FRANK X. ALTIMARI, U.S.C.J.

N.B. THIS SUMMARY ORDER WILL NOT

BE PUBLISHED IN THE FEDERAL REPORT AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

APPENDIX D

U.S. CONST. amend. I provides:

> Congress shall make no law respecting an establishment of religion or prohibiting the exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. CONST. amend VIII provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. CONST. amend XIV, §1 provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside. No State shall

make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.